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STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

June 23, 2006

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

PSF No.:06MD-063

Maui

Acquisition of Non-Exclusive Easement Over Private Lands and  
Set Aside to Department of Land and Natural Resources,  
Commission of Water Resource Management for Deep Monitor  
Well Purposes, Waihee, Maui, Tax Map Key: (2) 3-2-01:03 por.

APPLICANT AGENCY:

Department of Land and Natural Resources, Commission of Water  
Resource Management.

PRIVATE LANDOWNER:

Koolau Cattle Company LLC, a domestic limited liability company  
whose business and mailing address is 635 Kenolio Road, Kihei,  
Hawaii 96753.

LEGAL REFERENCE:

Sections 107-10, 171-11 and 171-30, Hawaii Revised Statutes, as  
amended.

LOCATION:

Privately-owned lands situated at Waihee, Maui, identified by tax  
map key: (2) 3-2-01:03, as shown on the attached map labeled  
Exhibit A. General location of the proposed easement is further  
identified on the attached location map labeled Exhibit B.

AREA:

80 square feet, more or less.

ZONING:

State Land Use District: Agricultural  
County of Maui CZO: Agricultural

CURRENT USE:

Vacant and unencumbered.

CONSIDERATION:

None. Private landowner is dedicating the subject easement at no cost to the State.

PURPOSE:

The proposed non-exclusive easement will be for deep monitor well purposes pursuant to §174C-14, HRS.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

This action before the Board involves a dedication of land that does not require the use of State funds to acquire land. Therefore, this action is exempt from the provisions of Chapter 343, HRS, relating to environmental impact statements.

Inasmuch as the Chapter 343 environmental requirements apply to Applicant's use of the lands, the proposed deep monitor well is exempt pursuant to Exemption Class #5, Item No. 2 of the Comprehensive Exemption List for the Department of Land and Natural Resources, Division of Water and Land Development, as approved by the Environmental Quality Commission, September 19, 1984, which reads:

"Construction of test wells not more than 8 inches in diameter to provide ground truth for water resources investigations, the suggested size will enable the aquifer to be tested for its physical, chemical, biological qualities, as well as providing a pumping test to determine the specific capacity of the aquifer. Test wells shall not be developed to serve water unless an EIS or negative declaration is prepared."

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Provide survey maps and descriptions for the privately-owned property according to State DAGS standards and at Applicant's own cost;
- 2) Obtain a title report for the privately-owned property at Applicant's own cost and subject to review and approval by the Department;

REMARKS:

The Department of Land and Natural Resources, Commission on Water Resource Management (CWRM) is requesting the Board of Land and

Natural Resources (BLNR) to approve the acquisition of a non-exclusive easement for deep monitor well purposes and a memorandum of agreement for well construction, maintenance and monitoring access purposes.

Whereas planned development in Waihee is believed to exceed the sustainable yield of the neighboring Iao Aquifer System (IAS), the County of Maui has developed additional wells in Waihee to alleviate the demands on the IAS. These county wells only penetrate into the freshwater portion of the basal aquifer and do not provide a complete profile of the Waihee Aquifer System (WAS).

Considering the continuing development in central Maui, water demand is expected to eventually exceed the sustainable yield of the Waihee aquifer as well. Consequently, CWRM has determined that data on the basal aquifer, transition zone and saline zone beneath the WAS is needed to help substantiate its sustainable yield and determine if a ground-water management designation is appropriate. Moreover, this data will allow the County of Maui, Department of Water Supply to more effectively operate their potable wells in the area.

Accordingly, CWRM has identified an appropriate site for a proposed deep monitor well situated on a ±370-acre privately-owned vacant parcel identified as TMK (2) 3-2-01:03 (Exhibit A). It is anticipated that the proposed deep monitor well will provide the required data for analysis.

Subject to BLNR approval, the landowner has agreed to dedicate gratis to the State an approximate 80 square foot nonexclusive perpetual easement, as identified by CWRM and generally depicted on Exhibit B, attached. However, should CWRM subsequently determine that the proposed easement is no longer necessary, said easement shall revert to the private land owner, its heirs or its assigns, provided that CWRM reasonably restores the area back to its original condition, or to a condition as mutually agreed to between CWRM and the owner.

Moreover, the landowner has agreed to provide access to the easement area for well construction, maintenance and monitoring purposes, at no cost to the State. Access terms will be mutually agreed upon and documented by a memorandum of agreement (MOA), subject to review and approval by the Department of the Attorney General (DAG), and recorded in the Bureau of Conveyance as an additional encumbrance on the privately-owned property.

CWRM has secured \$431,000 (CIP LNR 404, Project G55E Waihee Deep Monitor Well, Maui) for planning, design, construction, land and equipment. Although planning and design of the proposed deep monitor well are underway, construction will not commence prior to the acquisition of the proposed nonexclusive easement.

Although a Phase I Environmental Site Assessment (ESA) is typically required when the State acquires an interest in land, staff notes that a Phase I ESA should not be required for this proposed acquisition. Whereas historical use of the parcel has reportedly been limited to cattle grazing due to its steep and rocky terrain, it appears unlikely that any recognized environmental concerns would be identified on the proposed 80-square foot nonexclusive easement area. Based on the foregoing, requiring CWRM to procure a Phase I Environmental Site Assessment does not appear to represent a prudent use of public funds.

Consequently, should any environmental concerns be identified within the proposed 80-square foot easement area while or immediately following CWRM's use, CWRM shall be responsible for any required remediation within the proposed easement.

Comments were solicited from the Department of Hawaiian Home Lands, Department of Land and Natural Resources, Engineering Division, Office of Hawaiian Affairs and County of Maui's Department of Public Works and Environmental Management, and Department of Water Supply.

DLNR, Engineering Division provided that "the project site, according to the Flood Insurance Rate Map (FIRM), is located in Flood Zone C. The National Flood Insurance Program does not have any regulations for developments within Zone C." No other comments or objections were received.

RECOMMENDATION: That the Board:

1. Authorize the acquisition of a the subject nonexclusive easement over private lands under the terms and conditions cited above which are by this reference incorporated herein and further subject to the following:
  - A. The terms and conditions of a memorandum of agreement document providing access for well construction, maintenance and monitoring purposes;
  - B. The standard terms and conditions of the most current perpetual non-exclusive easement document form, as may be amended from time to time;
  - C. Review and approval by the Department of the Attorney General;
  - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
2. Approve of and recommend to the Governor the issuance of an executive order setting aside the subject lands to Department of Land and Natural Resources, Commission of

Water Resource Management, under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:

- A. The standard terms and conditions of the most current executive order form, as may be amended from time to time;
- B. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;
- C. Review and approval by the Department of the Attorney General; and
- D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Gavin Chun  
Project Development Specialist

APPROVED FOR SUBMITTAL:



Peter T. Young, Chairperson

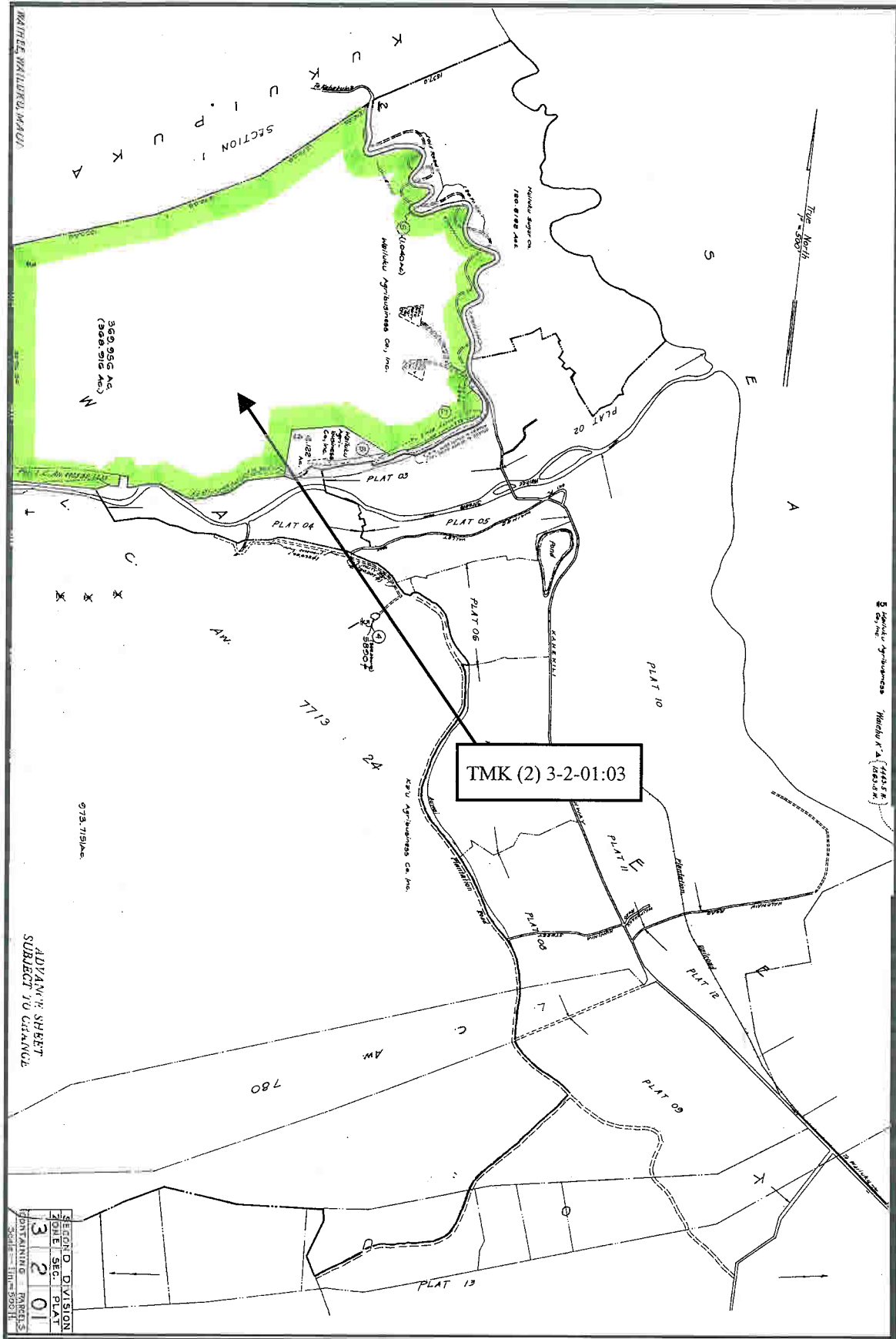
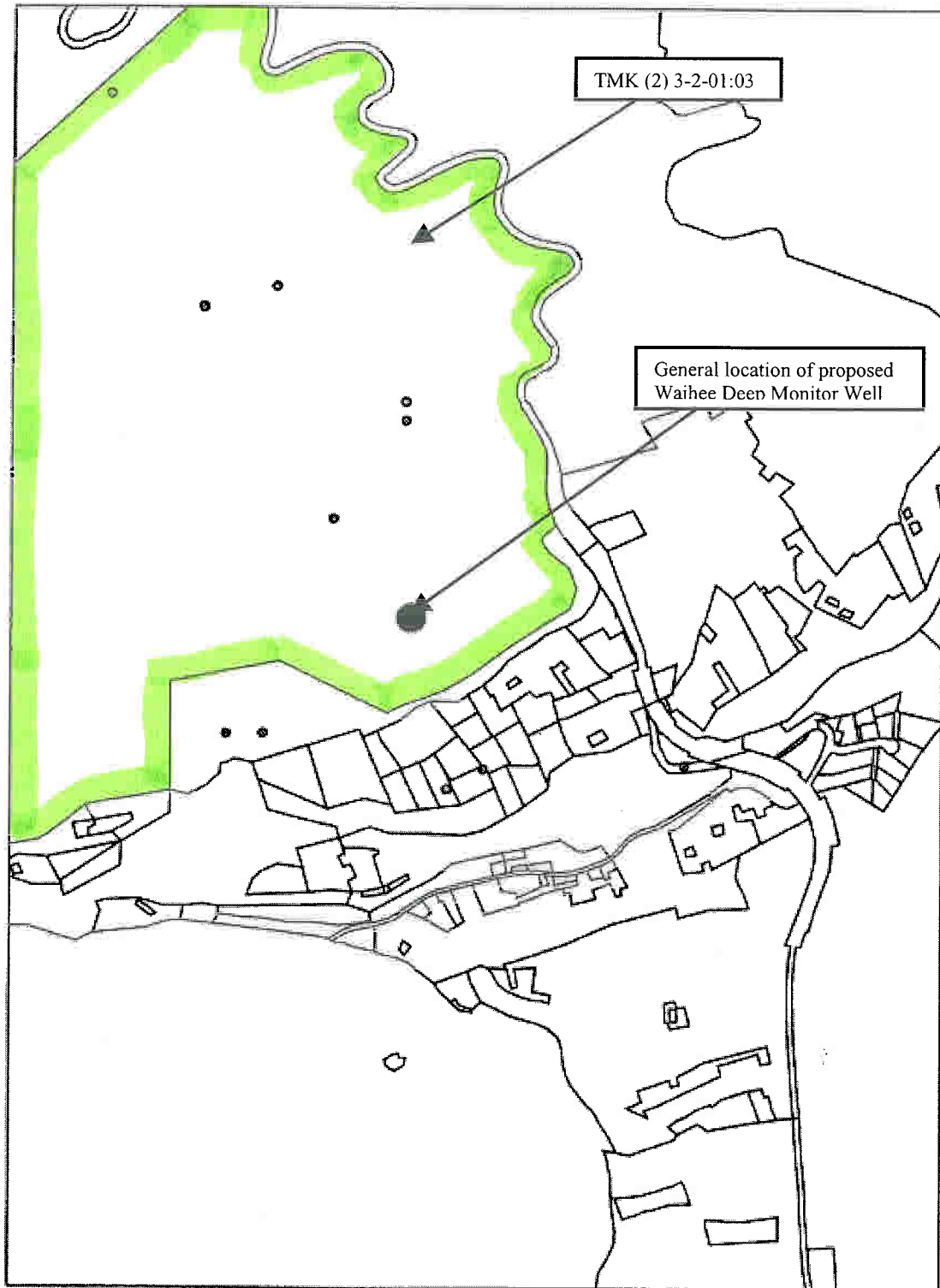


EXHIBIT "A"

# Waihee Deep Monitor Well Location Map



0 600 1,200 2,400 Feet

**EXHIBIT "B"**